

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

HASSAN THOMAS,

Petitioner

:
: **Criminal No. 1:03-CR-62-2**
:
: **(Chief Judge Kane)**
:
:

ORDER

Before this Court is Petitioner Hassan Thomas's motion styled "Petition to Impeach Judgment in the Interest of Justice for Extrinsic Fraud and Fraud upon the District Court." (Doc. No. 338.) Noting that this motion sought to challenge Petitioner's incarceration and sentence, this Court provided Petitioner with the requisite notice of election pursuant to United States v. Miller, 197 F.3d 644 (3d Cir. 1999), which was returned by Petitioner on September 21, 2009. Petitioner's notice indicated that he had not labeled his petition as a motion to vacate under 28 U.S.C. § 2255, and elected to have the Court rule on the petition as filed. (Doc. No. 369.) In reviewing his petition as filed, it is clear that Petitioner raises 28 U.S.C. § 2255 as a basis for this Court's jurisdiction to consider the petition and set aside his sentence. (Doc. No. 338 ¶ 3.) The Court finds that 28 U.S.C. § 2255 is the only proper basis for the present petition. Accordingly, this Court will review the petition as one brought under 28 U.S.C. § 2255.

The Court has conducted a preliminary review of the petition pursuant to Rule 4 of the Rules Governing § 2255 Proceedings. Accordingly, on this 8th day of December 2009, **IT IS ORDERED THAT:**

1. The United States Attorney shall respond to the petition within twenty (20) days of the date of this order.
2. Petitioner shall, if he so desires, file a reply to the response within twenty (20) days of its filing.

3. A determination of whether Petitioner shall be produced for a hearing will be held in abeyance pending submission of a response

S/ Yvette Kane

Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania